

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1772

IN THE MATTER OF:

Served November 30, 1977

Application of VINCENT FERGUSON GIBSON)
T/A CONTINENTAL LIMOUSINE for a)
Certificate of Public Convenience and)
Necessity to Perform Special Opera-)
tions - Dulles International Airport)
-----)
EXECUTIVE LIMOUSINE SERVICE, INC.)

Application No. 986

Docket No. 366

Formal Complaint No. 77-2

Docket No. 373

v.)

VINCENT FERGUSON GIBSON)
T/A CONTINENTAL LIMOUSINE)
-----)

Application No. 994

Docket No. 371

Application of EXECUTIVE LIMOUSINE)
SERVICE, INC., for a Certificate of)
Public Convenience and Necessity to)
Perform Special Operations)
-----)

Application No. 1006

Application of VINCENT FERGUSON GIBSON)
T/A CONTINENTAL LIMOUSINE for Tempo-)
rary Authority to Conduct Special)
Operations - TWA Flight Crews)

This matter comes before the Commission by "Motion for Continuance of Temporary Authority" filed November 28, 1977, by counsel for Vincent Ferguson Gibson trading as Continental Limousine (Continental). To some extent each of the above-captioned proceedings is involved, but particular attention is given to Order No. 1765, served November 1, 1977, which is incorporated herein by reference.

As here pertinent, Order No. 1765 denied Application No. 986 of Continental for a certificate to transport certain airline crews between Dulles International Airport, on the one hand, and, on the other, the Shoreham Hotel and the Gramercy Inn, both in the District of Columbia. Order No. 1765 also granted Application No. 994 of Executive Limousine Service, Inc. (Executive), for a certificate to perform the same service. That order also provided that Continental's temporary authority to provide the service would be allowed to expire on November 30, 1977, according to the terms of Order No. 1734, served August 5, 1977.

By its motion of November 28, Continental seeks an extension of temporary authority, stating as the reasons therefor:

1. There remains an immediate and urgent need for the special operations service which Continental has performed pursuant to the Commission's grant of temporary authority.

2. No carrier other than Continental is ready and able to provide the service required by the TWA domestic flight crews, currently provided by Continental.

3. Failure to continue Continental's temporary authority would unfairly prejudice Continental's right to full consideration of its Application for Reconsideration of Order No. 1765.

With respect to item 1, we find the immediate and urgent need for the service continues to exist as was determined in both Order No. 1734 and Order No. 1765.

As concerns item 2, the plan of Order No. 1765 was that Continental's temporary authority would expire on November 30, by which time, upon compliance with certain other requirements of that order, 1/ Executive would have been issued a certificate to provide the service and would be in a position to commence operations. Thus, there would be no hiatus in service.

Continental's motion of November 28 asserts that it will timely file an application for reconsideration of Order No. 1765, 2/ the effect of which would be to stay the grant of authority to Executive, thereby creating a situation where neither Continental nor Executive could provide the service.

We find that the two concurrent criteria required to underpin a grant of temporary authority are met (see Compact, Title II, Article XII, Section 4(d)(3)) and, accordingly, that the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority to Continental. For this reason we find it unnecessary to reach a determination on Continental's item 3.

There is, however, one other item which warrants discussion. It is fitness. Fitness is always an issue, even in consideration of temporary authority where it is not specifically mentioned in the statute as a criterion. We recognized this in Order No. 1734, stating:

1/ Executive complied with those requirements on November 4, 1977, and a certificate was issued on November 7, 1977.

2/ A timely application for reconsideration was filed by Continental on November 30, 1977.

The Commission further notes that the evidence of record in the above-noticed proceedings raises serious questions about applicant's fitness, willingness and ability to conform to the provisions of the Compact and the rules, regulations and orders of the Commission. The Commission has always considered the issue of fitness in temporary authority applications as to safety, compliance with the law, capacity to provide service and any other aspect of fitness deemed material in a particular proceeding. However, unlike proceedings in which a certificate of public convenience and necessity is sought, fitness is not a separate statutory criterion, and the evidence of unfitness is weighted in light of the urgency of the expressed public need. Here, because the records clearly reflect that innocent parties may be left without transportation service should this application be denied, the Commission shall defer further consideration of this issue until such time as the corresponding permanent application and complaint proceeding are submitted for disposition. The granting of temporary authority, however, gives no rise to any presumption regarding applicant's fitness, and, of course, raises no presumption that permanent authority will be granted.

Having thus deferred the fitness issue for consideration in connection with Application No. 986, we there found Continental unfit. 3/ Now we must decide Continental's motion for an extension of temporary authority where the statutory criteria are met, but where we have now found Continental unfit.

Continental filed its application for reconsideration only today, and while we make no disposition of it at this time, we note that it asserts the Commission erred in finding Continental unfit. We find that this removes the barrier to a grant of temporary authority which would otherwise have been posed by the finding of unfitness in Order No. 1765, and puts the matter back within the discretion given the Commission by the Compact, Title II, Article XII, Section 4(d)(3). In this posture, we are disposed to extend Continental's temporary authority pending determination of its application for reconsideration. Again, this action does not imply a finding of fitness.

We here note that the maximum statutory entitlement to temporary authority is 180 days, and November 30 is the 108th day. We shall extend Continental's temporary authority through Friday, February 10, 1978 (the 180th day), or until a determination of its application for reconsideration has been made.

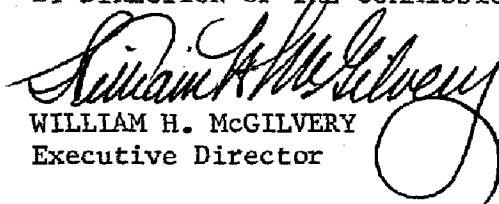
3/ See Order No. 1765, served November 1, 1977, pp. 8-10.

THEREFORE, IT IS ORDERED:

1. That the Motion for Continuance of Temporary Authority filed November 28, 1977, by Vincent Ferguson Gibson trading as Continental Limousine, except to the extent granted herein, be, and it is hereby denied.

2. That the temporary authority granted to Vincent Ferguson Gibson trading as Continental Limousine by Order No. 1734, served August 5, 1977, be, and it is hereby, extended through Friday, February 10, 1978, unless otherwise ordered by the Commission.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director